

## EXTENSIONS OF REMARKS

UNITED STATES-CHINA TRADE  
RELATIONS**HON. CHRISTOPHER H. SMITH**

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, June 8, 1999*

Mr. SMITH of New Jersey. Mr. Speaker, the Administration's toothless human rights policy towards China has failed miserably. In the five years since President Clinton de-linked China's MFN status from human rights considerations, there has been regression—not progress—within China. Even standing apart from new revelations of nuclear espionage and the skyrocketing U.S.-China trade deficit, this deteriorating situation justifies a fundamental reassessment of U.S.-China trade policy. A couple of examples may help flesh out the seriousness of the matter.

In 1992 the U.S. and Chinese Governments signed a Memorandum of Understanding (MOU) prohibiting trade in slave-made goods, which was followed by a 1994 Statement of Cooperation. Notwithstanding those agreements and China's own laws against slave-made exports, Beijing is turning the Laogai—the Chinese Gulag—into a profit-making venture. Slave-made products—from office supplies to Christmas decorations—regularly make their way to the shelves of American stores. Even the State Department has been forced to admit that “[f]orced labor is a problem” and that China's cooperation with the MOU “has been inadequate.” Indeed, the Department reports that in every case where the United States asked to visit a suspect facility during 1998, “the [Chinese] Ministry of Justice refused the request, ignored it, or simply denied the allegations made without further elaboration.” In short, the MOU is not worth the paper it is written on.

Similarly, in October 1998, the Chinese regime signed the International Covenant on Civil and Political Rights. Taking the bait, the Administration used China's promise to sign the ICCPR as a reason not to raise China's human rights violations at last year's meeting of the UN Human Rights Commission. The Administration heralded China's signature as an improvement—something that would lay the groundwork for future human rights accountability within China. Admittedly, the ICCPR contains many worthwhile guarantees, such as the right of political self-determination (Article 1), the basic rights of criminal defendants (Article 14), the right of free expression (Article 19), and the right to free elections (Article 25). But within two months after signing the ICCPR, the Chinese government violated each of those provisions in a brutal, systematic crackdown on democratic dissent that continues to this day. In fact, in the last month alone, Chinese officials have detained over 150 dissidents.

The slave labor MOU and the ICCPR signing are only two of many examples. But they

illustrate a fundamental lesson that we ignore at our peril: When dealing with the Communist dictatorship of the People's Republic of China, the United States cannot settle for paper promises or deferred compliance. We must stop accepting pledges of future improvement in place of actual improvements. The Chinese dictatorship regularly tells bold-faced lies about the way it treats its own people, such as by asserting that no one died at Tiananmen Square, and that there is complete religious freedom in China. How, then, can we take its word when it comes to matters of mere commerce? We cannot. Reforms within China must precede the rewards of WTO membership, and should be a prerequisite for annual MFN status.

When I say “reforms,” I do not mean only economic reforms. We must also demand respect for the basic rights of the Chinese people. The Administration's policy of so-called “constructive engagement” on behalf of human rights has been a disaster, even according to the Administration's own benchmarks.

In quarterly reports, Amnesty International has been tracking the seven human rights policy goals that President Clinton publicly announced before his trip to Beijing in 1998. Those reports detail a complete lack of progress in all categories, and even some regression, during the past year: Release all prisoners of conscience and Tiananmen Square prisoners: “Total failure, Regression”; review all “Counter-Revolutionary” Prison terms: “Total failure, no Progress”; allow religious freedom: “Total failure, no progress”; prevent coercive family planning and harvesting of organs: “No progress”; fully implement pledges on human rights treaties: “No progress”; review the “Re-education through labor” system: “Total failure, no progress”; and end police and prison brutality: “Total failure, no progress”.

The Communist government of the PRC continues to engage in systematic violations of basic human rights on a massive scale. It does not allow significant political dissent. It prohibits the free exercise of religion and imprisons religious leaders, ranging from the 10-year-old Panchen Lama to the elderly Catholic Bishop Su of Baoding Province. It summarily executes political prisoners in the Xinjiang Uighur Autonomous Region. It harvests and sells the internal organs of executed prisoners. It forces women who have “unauthorized” pregnancies to abort their children and submit to sterilization. It continues to brutalize the indigenous peoples of Tibet and East Turkestan.

The failure of the Administration's current policy to effect any improvement should come as no surprise. While the rulers of the Chinese Communist Party may be ruthless and despotic, they are not stupid. If there are no costs associated with the brutality that keeps them in power, then they have no incentive to become less brutal.

Thus, when big business and the Clinton Administration really want to change Beijing's conduct—for instance, in the effort to get China to respect international copyright—what do they do? Do they decide that we should be patient, that we should constructively engage for a few years, and sooner or later Beijing will come around? No. They use economic sanctions—the very same sanctions they say would be counterproductive as a means of promoting political and religious freedom in China. I am aware of at least three occasions since 1991 when the U.S. Trade Representative threatened to impose billions of dollars in sanctions to vindicate U.S. intellectual property interests. In each of those cases, when faced with the sanctions, the Chinese government changed its behavior.

By their actions, big business and the Clinton administration show their faith in sanctions. By their reactions, Chinese leaders show the efficacy of sanctions. Thus, the question before us is not “Can economic sanctions work?” It is, “Why do we use sanctions to protect software, but not human life; to protect musical recordings but not fundamental political and religious freedoms; to stop movie piracy, but not torture?” In all the years I have been asking that question, I have not yet heard a good answer.

We have abandoned the American ideals of freedom and democracy for the sake of marginally cheaper consumer goods. We have squandered our patrimony of liberty for the profit of corporations who want access to China's inexpensive labor market. The people of the United States are waking up to this reality and, I believe, will no longer stand for it.

It is time to do an about face, to condition expanded trade relations upon respect for internationally recognized, fundamental human rights. American interests and American values demand no less.

FINANCIAL INCENTIVES ON DOCTORS NOT TO PROVIDE CARE: FEDERAL COURT EXPLAINS THE DANGERS: REASONS WHY WE SHOULD PASS H.R. 1375

**HON. FORTNEY PETE STARK**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, June 8, 1999*

Mr. STARK. Mr. Speaker, recently, I introduced H.R. 1375, a bill to limit the amount of financial pressure an HMO can place on a doctor to discourage referrals and testing. A recent Federal Appeals Court case provides new documentation on why we should pass such legislation.

Current regulations allow an HMO to withhold up to 25% of a doctor's compensation as a way to discourage “unnecessary” treatment.

● This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

The problem is, such "withholds" can discourage necessary as well as unnecessary treatments and tests. My bill would limit any HMO "withhold" to 10% and encourage the use of quality measures as the basis of payments to doctors.

On August 18, 1998, the US 7th Circuit issued a majority opinion in the case of *Herdrich v. Pegram, Carle Clinic Association, and Health Alliance Medical Plans*. Following are portions of that opinion—exhibit #1 for why we need a national policy limiting HMOs and medical plans for putting too much financial pressure on doctors.

On March 7, 1991, Pegram, Herdrich's doctor, discovered a six by eight centimeter "mass" (later determined to be her appendix) in Herdrich's abdomen. Although the mass was inflamed on March 7, Pegram delayed instituting an immediate treatment of Herdrich, and forced her to wait more than one week (eight days) to obtain the accepted diagnostic procedure (ultrasound) used to determine the nature, size and exact location of the mass. Ideally, Herdrich should have had the ultrasound administered with all speed after the inflamed mass was discovered in her abdomen in order that her condition could be diagnosed and treated before deteriorating as it did, but Carle's policy requires plan participants to receive medical care from Carle-staffed facilities in what they classify as "non-emergency" situations. Because Herdrich's treatment was considered to be "non-emergency," she was forced to wait the eight days before undergoing the ultrasound at a Carle facility in Urbana, Illinois. During this unnecessary waiting period, Herdrich's health problems were exacerbated and the situation rapidly turned into an "emergency"—her appendix ruptured, resulting in the onset of peritonitis. In an effort to defray the increased costs associated with the surgery required to drain and cleanse Herdrich's ruptured appendix, Carle insisted that she have the procedure performed at its own Urbana facility, necessitating that Herdrich travel more than fifty miles from her neighborhood hospital in Bloomington, Illinois. The "market forces" the dissent refers to hardly seem to have produced a positive result in this case—Herdrich suffered a life-threatening illness (peritonitis), which necessitated a longer hospital stay and more serious surgery at a greater cost to her and the Plan. And, as discussed below, we are far from alone in our belief that market forces are insufficient to cure the deleterious affects of managed care on the health care industry.

Across the country, health care critics and consumers are complaining that the quality of medical treatment in this nation is rapidly declining, leaving "a fear that the goal of managing care has been replaced by the goal of managing costs." (Jan Greene, *Has Managed Care Lost Its Soul? Health Maintenance Organizations Focus More on Finances, Less on Care*, Am. Hosp. Publishing Inc., May 20, 1997.)

An increasing number of Americans believe that dollars are more important than people in the evolving [HMO] system. Whether justified or not, this assumption needs to be taken seriously, according to keepers of the industry's conscience. University of Pennsylvania bioethicist Arthur Caplan argues that managed care should take a lesson from professional sports, which has alienated some fans because money and profits have eclipsed the reasons why fans are about the games: hero worship and the virtues of team-

work, loyalty and trust-worthiness. The same goes for doctors. "People go to their doctor not because he's a good businessman . . . but because he's a good advocate, someone we can admire," says Caplan. "If we have to struggle with him to get what we want, we will have no trust anymore."

To regain trust, HMOs need to be more sensitive to the doctor-patient relationship and remove the physician from direct financial interest in patient care, says Caplan. Instead, doctors should have a predetermined budget and be able to advocate for patients without direct personal gain or loss.

Another hot-button issue for HMO members is the fear that a lifesaving experimental procedure will be denied because of its cost. Caplan says the industry should follow the lead of the handful of HMOs that have established outside, independent panels to make final decisions.

Even care providers fear that they "have become somewhat preoccupied with [their] ownership status and consequently have not paid as much attention as [they] should have to improving [their] basic core competencies." (Id.) The specter of money concerns driving the health care system, says a group of Massachusetts physicians and nurses, "threatens to transform healing from a covenant into a business contract. Canons of commerce are displacing dictates of healing, trampling our professions' most sacred values. Market medicine treats patients as profit centers." (For Our Patients, Not for Profits: A Call to Action, JAMA, Dec. 3, 1997, at 1773.) As one professional stated, "It's too bad. We used to spend most of our time worrying about how to do a better job. Now we worry about doing a better job at a lower price." (Id.)

Thousands of American physicians and nurses, outraged by the increasingly "corporate" nature of American medicine, recently staged a reenactment of the Boston Tea Party by symbolically dumping \$1 million each minute into Boston Harbor to dramatize the amount of health care money that is being wasted to pay for HMO marketing, profits, and administrative salaries. See Id.

The shift to profit-driven care is at a gallop. For nurses and physicians, the space for good work in a bad system rapidly narrows. For the public, who are mostly healthy and use little care, awareness of the degradation of medicine builds slowly; it is mainly those who are expensively ill who encounter the dark side of market-driven health care. We criticize market medicine not to obscure or excuse the failings of the past, but to warn that the changes afoot push nursing and medicine farther from caring, fairness, and efficiency.

Another commentator observed that "American 'market theology' is being invoked as an excuse for the downgrading of patient care and the growing absence of compassion in health care." (Bob LeBow, *Nation Needs to Take Control of Health Care System for Patients, not Profits*, Idaho Statesman, Dec. 2, 1997, at 6A). Instead of providing health care, doctors are forced to "spend many hours persuading health insurance companies that we are not trying to manipulate them into paying more money than Medicare does for kidney transplants." (Gabriel M. Danovitch, et al., *And How the Decisions Are Made*, 331 New Eng. J. Med., at 331-32 (1984).)

In order to minimize health care costs and fatten corporate profits for HMOs, primary care physicians face severe restrictions on referrals and diagnostic tests, and at the

same time, must contend with ever-shrinking incomes.

Sixty percent of all managed-care plans, including HMOs and preferred-provider organizations, now pay their primary-care doctors through some sort of "capitation" system, according to the Physician Payment Review Commission in Washington, D.C. That is, rather than simply pay any bill presented to them by your doctor, most HMOs pay their physicians a set amount every month—a fee for including you among their patients. At Chicago's GIA Primary Care Network, for instance, physicians get \$8.43 each month for every male patient . . . and \$10.09 for every female patient. . . . Some HMOs, such as Oxford Health Plans, Cigna and Aetna, have "withhold" systems, in which a percentage of the doctors's monthly fees are withheld and then reimbursed if they keep their referral rates low enough. Others, like U.S. Healthcare, pay bonuses for low referral rates. (John Protos, *Ten Things Your HMO Won't Tell You*, Inside, June 30, 1997, at 44.)

There is ample evidence that the bottom-line mentality is taking over. HMOs refer to the proportion of premiums they pay out for patient care as their "medical-loss ratio"—a chilling choice of words. The Association of American Medical Colleges reported last November that medical-loss ratios of for-profit HMOs paying a flat fee to doctors for treatment averaged only 70% of their premium revenue. The remaining 30% went for administrative expenses—and profit.

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Along the same lines as its "market forces" argument, the dissent submits that the defendants' plan "encouraged physicians to use resources more efficiently." Although we agree, at least in principle, with the idea that financial incentives may very well bring about a more effective use of plan assets, we certainly are far from confident that it was at work in this particular case. The Carle health plan at issue was not used as efficiently as it should have been. Indeed, the eight-day delay in medical care, and the onset of peritonitis Herdrich incurred as a result of such delay in diagnosis, subjected her to a life threatening illness, a longer period of hospitalization and treatment, more extensive, invasive and dangerous surgery, increased hospitalization costs, and a greater ingestion of prescription drugs.

The dissent also somehow contends that "ERISA tolerates some conflict of interest on the part of fiduciaries," and therefore, "allowing a plan sponsor to designate its own agent as a fiduciary reassures the sponsor that, in devoting its assets to the plan, it has not relinquished all ability to ensure that the plan's resources are used wisely."

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A doctor who is responsible for the real-life financial demands of providing for his or her family—sending four children to school (whether it be college, high school or primary school), making house payments, covering office overhead, and paying malpractice insurance—might very well "flinch" at the prospect of obtaining a relatively substantial bonus for himself or herself. Here, the Carle physicians were intimately involved with the financial well-being of the enterprise in that the yearly "kickback" was paid to Carle physicians only if the annual expenditure made by physicians on benefits was less than total plan receipts. According to the complaint, Carle doctors stood to gain financially when they were able to limit treatment and referrals. Due to

the dual-loyalties at work, Carle doctors were faced with an incentive to limit costs so as to guarantee a greater kickback.

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In summary, we hold that the language of the plaintiff's complaint is sufficient in alleging that the defendant's incentive system depleted plan resources so as to benefit physicians who, coincidentally, administered the Plan, possibly to the detriment of their patients. The ultimate determination of whether the defendants violated their fiduciary obligations to act solely in the interest of the Plan participants and beneficiaries, see 29 U.S.C. §1104(a)(1), must be left to the trial court. On the surface, it does not appear to us that it was in the interest of plan participants for the defendants to deplete the Plan's funds by way of year-end bonus payouts. Based on the record we have before us, we hold that the plaintiff has alleged sufficiently a breach of the defendants' fiduciary duty.

IN SPECIAL RECOGNITION OF  
CULLEN T. GALLAGHER ON HIS  
APPOINTMENT TO ATTEND THE  
UNITED STATES AIR FORCE  
ACADEMY

**HON. PAUL E. GILLMOR**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, June 8, 1999*

Mr. GILLMOR. Mr. Speaker, I rise today to pay special tribute to a truly outstanding young man from Ohio's Fifth Congressional District. Recently, I had the opportunity to nominate Cullen T. Gallagher for an appointment to attend the United States Air Force Academy in Colorado Springs, Colorado.

I am pleased to announce that Cullen has been offered an appointment and will be attending the Air Force Academy with the incoming cadet class of 2003. Attending one of our Nation's military academies is one of the most rewarding and demanding time periods these young men and women will ever undertake. Our military academies turn these young adults into the finest officers in the world.

Mr. Speaker, Cullen has demonstrated the kind of leadership and dedication needed to enter the Air Force Academy with the class of 2003. While attending Perkins High School in Sandusky, Ohio, Cullen excelled academically attaining a grade point average of 3.795, which ranks him forty-first in his class of one-hundred sixty students. Cullen is a member of the National Honor Society, the Academic Challenge Team, and the Who's Who Among American High School Students. In October, 1998, Cullen was named the Rotary Club's Student of the Month.

In addition, he attended the National Youth Leadership Forum on Law and the Constitution in Washington, D.C., and attended the United States Air Force Academy Summer Scientific Seminar. Outside the classroom, Cullen is the president of the Ski Club, and is a member of the Spanish Club, Drama Club, Marching Band, and Show Choir. On the fields of competition, Cullen is a member of the Perkins High School Varsity Cross Country and Tennis teams.

Mr. Speaker, at this point, I would ask my colleagues to stand and join me in paying spe-

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cial tribute to Cullen T. Gallagher. Our service academies offer the finest education and military training available anywhere in the world. I am sure that Cullen will do very well at the Air Force Academy, and I wish him much success in all of his future endeavors.

TRIBUTE TO WESTLAKE HILLS  
ELEMENTARY SCHOOL

**HON. BRAD SHERMAN**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, June 8, 1999*

Mr. SHERMAN. Mr. Speaker, I rise today to celebrate the designation of Westlake Hills Elementary School as a United States Department of Education National Blue Ribbon School.

The Blue Ribbon Award for Educational Excellence recognizes a school's achievement in all facets of academic development including teacher training, student achievement, educational innovation, and community involvement.

Westlake Hills Elementary School has far transcended the norm in all these areas and has demonstrated its deep commitment to molding well rounded, socially conscious leaders for the 21st century through its outstanding range of programs.

Westlake Hills teachers frequently participate in workshops and conferences on a wide range of educational issues, showing the tremendous value Westlake Hills places on maintaining the high caliber of its faculty and keeping its teachers abreast of new idea in education. These teachers then employ these ideas in the classroom, resulting in projects including a 6th grade "wax museum" and a 1st grade "dinosaur dig." In addition, Westlake Hills recognizes the importance of involving a child's first and most influential teachers in the learning experience, with 75% of Westlake Hills parents logging in an astounding 12,000 hours of volunteer time.

These efforts are reflected in the test scores of the student body, which place Westlake Hills above all the other elementary schools in its district. Westlake Hills has also answered President Clinton's "America Reads Challenge" by forging a partnership with nearby Pepperdine University, in order to ensure that each and every child can read both independently and effectively.

Along with its demonstrated excellence in the classroom, Westlake Hills realizes the importance of extracurricular activities in creating the "total" student. Over 200 children participate in clubs for subjects including drama, physical fitness, and Spanish. A club also exists for computers, making use of the school's technology center.

Westlake Hills believes that their goal in forming the "total" student would also be incomplete without instilling in the students a sense of their responsibilities as members of their local community. They have joined General Colin Powell's "Make a Difference" volunteer program, where the children share their time assisting senior citizens.

Mr. Speaker, distinguished colleagues, please join me in celebrating the recognition of

Westlake Hills Elementary School as a National Blue Ribbon School. It is a prime example of the extremely positive effects which a partnership between all members of a school community can produce. Westlake Hills' approach to public education is a paradigm which all American schools should strive to emulate.

A TRIBUTE TO THE DE JONG  
FAMILY

**HON. RANDY "DUKE" CUNNINGHAM**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, June 8, 1999*

Mr. CUNNINGHAM. Mr. Speaker, I rise today to pay tribute to the de Jong family of San Diego County, California. Over the last few years, I have had the privilege of working with Arie de Jong and other members of a family that epitomizes the American success story. The de Jong's are close friends to America, which has given them the opportunity to lead and succeed.

On May 26, the de Jong family celebrated 50 years of American heritage with a reunion in Poway, California. Since 1948, when Tom de Jong moved to America, the de Jong family has been an important piece of San Diego's community.

I have attached an article from the online edition of the San Diego Union Tribune that explains more family history and this recent celebration.

In addition, I want to extend my personal congratulations on their first 50 years in American history, and wish them health and happiness for the next 50 years.

FAR-FLUNG FAMILY MEETS, MARKS 50 YEARS  
IN U.S.

(By John Berhman)

POWAY—The de Jong family is a coming-to-America success story.

Fifty years ago, from their native Holland, the family—a mother, father and 10 children—traveled across the United States to a relative's sparse cattle ranch here. From that beginning, they grew into one of the most successful and well-known families in North County.

The family's Hollandia Dairy in San Marcos in an institution. Family members have spread out all over California and the country, many of them working in the dairy business.

Yesterday, many of them returned to their American roots, celebrating 50 years of being in this country with a family reunion where it all started.

They met at Old Wyoming Picnic Grounds, the family homestead at the end of Old Pomerado Road in south Poway. They gathered around shady oak trees and three stone buildings that served as the family's first homes in this country to reminisce and give thanks.

It is quite an extended family now. From 10 brothers and sisters have come 54 children and nearly 100 grandchildren, most of whom are expected during the reunion. About five family members, mostly cousins, are attending from Holland. Other family members have come from Oregon, Michigan, New Mexico and various parts of California.

"This is wonderful. This is what family and friends are all about. And, this great